

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

GARY FARLEY, as Administrator of the
Estate of LARRY G. FARLEY, deceased,

Plaintiffs,

-against-

COMPLAINT

Civil Case No.: _____

THE UNITED STATES OF AMERICA,

Defendant.

Plaintiff, by and through its counsel as and for its complaint against the defendant,
alleges as follows:

1. This is an action against the defendant under the Federal Tort Claims Act (28 U.S.C. §2671, et seq.) and 28 U.S.C §1346 (b)(1) for negligence and medical malpractice in connection with the care provided to plaintiff's decedent by the defendant through the Veteran's Administration Hospital at 3495 Bailey Avenue, Buffalo, New York. (hereinafter the "VA").

2. The claims herein are brought against the defendant pursuant to the Federal Tort Claims Act (28 U.S.C. §2671, et seq.) and 28 U.S.C §1346 (b)(1), for money damages as compensation for personal injuries, pain and suffering and the wrongful death of Larry G. Farley caused by the defendant's negligence and medical malpractice committed by the VA and its agents servants and employees.

3. Plaintiffs have fully complied with provisions of 28 U.S.C §2675 of the Federal Tort Claims Act by duly serving on the Veterans Administration a Standard Form 95.

4. This suit has been timely filed in that plaintiff duly served their completed Form 95 on the defendant's agent and more than 6 months has elapsed without a settlement or rejection of plaintiff's administrative claim.

5. Plaintiff is now filing this complaint pursuant to 28 U.S.C. §2401(b) after failing to receive a response from the defendant pursuant to 28 U.S.C §2675 (a).

6. Plaintiff is and at all times relevant hereto, is a resident of Erie County, State of New York who was duly appointed as the administrator of the estate of Larry G. Farley on March 8th, 2017.

7. The VA is a part of the United State of America.

8. At all times relevant to this complaint, the defendant through the VA held itself out to U.S. veterans as a provider of high quality health care services with expertise necessary to maintain the health and safety of patients like Larry G. Farley.

9. At all times relevant to this complaint, the physicians, nurses, directors, officers, operators, administrators, employees, agents and staff of the VA Hospital in Buffalo, New York were employed and/or acting on behalf of the defendant.

10. Further, the defendant is liable for the negligent acts of their employees and agency under the doctrine of *respondeat superior*.

11. Jurisdiction is proper under 28 U.S.C §1346 (b)(1).

12. Venue is proper under 28 U.S.C §1402(b) in that all, or substantial part of the acts and admissions forming the basis of these claims occurred in the Western District of New York.

13. On or about July 25, 2016 Larry G. Farley underwent a surgical procedure at the VA.

14. While still under the care of the VA, Larry G. Farley developed a severe infection which was not properly investigated, diagnosed and treated by the VA.

15. Thereafter the infection grew and Larry G. Farley became septic.

16. The VA failed to provide Larry G. Farley with the generally accepted level of medical care within the community.

17. As a direct and proximate result, Larry G. Farley endured conscious pain and suffering and ultimately died on August 13, 2016.

18. A Certificate of Merit pursuant to New York CPLR Sec. 3012-A is being filed and served herewith.

AS AND FOR A FIRST CAUSE OF ACTION

19. Plaintiff repeat and realleges each and every prior allegation contained herein.

20. Defendant's conduct constitutes medical malpractice and negligence and Larry G. Farley endured conscious pain and suffering and ultimately died as a result.

AS AND FOR A SECOND CAUSE OF ACTION

21. Plaintiff repeat and realleges each and every prior allegation contained herein.

22. The decedent is survived by one or more distributes.

23. Defendant is liable to the decedent's distributes under New York's wrongful death statute N.Y. EPTL § 5-4.1 for all damages provided thereunder including economic loss and funeral expenses.

WHEREFORE, the plaintiff, by counsel, respectfully requests an award of damages against the defendant in the amount of ONE MILLION TWO HUNDRED AND FIFTY THOUSAND and 00/100 dollars (\$1,250,000.00), plus costs and for such other relief as deemed appropriate and permitted by law.

Dated: May 1, 2018

E. STEWART JONES HACKER
MURPHY, LLP

By: 

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